

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES  
MONTGOMERY COUNTY, MARYLAND**

**Norbeck Hills Homeowners Association,**  
Complainant

v.

Case #44-09

**Martin E. Nelson, Jr.,**  
Respondent

**JUDGMENT BY DEFAULT**

This dispute comes before a panel of the Commission on Complainant's application for a default judgment against Respondent.

The panel has reviewed the record and makes the following findings of fact and conclusions of law.

**Findings of Fact**

1. The Complainant is a homeowners association within the meaning of Section 11B-101 of the Real Property Article of the Code of Maryland, and its Covenants are filed in the land records of Montgomery County, Maryland.
2. The Respondent owns a lot subject to the covenants of the Complainant, located at 17547 Longview Lane, Olney, Maryland.
3. Respondent began to construct raised planter beds in front of his home beginning approximately January, 2008. He did not seek Complainant's approval before doing so, and the Complainant sent him several written notices that he must apply for permission to construct the raised beds. He finally sent in a complete application on June 23, 2008, which Complainant approved on July 10, 2008. However, as of July 17, 2009, the work was still not complete.
4. On July 24, 2009, Complainant filed this complaint, alleging that the Respondent was in violation of the governing documents by not completing the work within 12 months after it had commenced, by storing construction materials in the common areas without permission, and by not performing the work according to the terms of approval he had received. The Commission's staff mailed a copy of the complaint to Respondent on July 27, 2009, which was not returned.

5. Under COMCOR Section 10B.06.01.03(b), Respondent's answer was due in 30 days. By September 24, 2009, Respondent had not filed an answer, and the Commission's staff notified Complainant of its right to request an order of default pursuant to the Commission's *Default Judgment Procedures*. Staff sent a copy of this notice, as well as a copy of the *Procedures* themselves, to Respondent.

6. On January 7, 2010, Complainant filed its request for a default. The Commission's staff notified both parties in writing that the request would be heard at the Commission's monthly meeting on February 3, 2010. There was no response from Respondent.

7. On February 3, 2010, the Commission voted to grant the order of default, and on February 4, 2010, the Commission's staff mailed copies of the order to Respondent by regular and certified mail. The certified mail was returned "Unclaimed," but the regular mail was not returned.

8. Respondent did not reply to the order of default. On April 30, 2010, the staff inspected the property and found the work incomplete in that although the stone walls had been built, the beds inside them were not planted, and were bare dirt or weeds, and there was a rock in the front yard. In addition, in an email of May 14, 2010, the Complainant's property manager confirmed that the landscaping of the beds was incomplete, that "landscape fabric" was exposed, and that construction materials were still stored in front of the home.

9. Complainant's Declaration of Covenants, Article VII, Section 1, states that "no building, fence, *wall* or other improvements or structures shall be commenced. . . on The Property, nor shall any exterior addition to or change. . . or other alteration be made until the complete plans and specifications. . . shall have been submitted and approved in writing. . . by the Architectural and Environmental Control Committee." (Emphasis added.)

10. The Declaration of Covenants, Article VII, Section 4, requires that all approved construction must begin within 6 months after approval and be substantially completed within 12 months after construction began.

### **Conclusions of Law**

1. The Commission has jurisdiction of this dispute pursuant to Section 10B-8(3)(A)(i) of the Montgomery County Code.

2. The Commission has personal jurisdiction over the Respondent.

3. The Respondent is subject to the Complainant's governing documents and rules and regulations. These documents prohibit the making of any changes to the exterior of any dwelling without the advance approval of the Complainant. Respondent

is in violation of these documents in that he has not completed the work within 12 months after it was commenced. The work was already underway by the time the Complainant granted approval for it in July, 2009.

**ORDER**

It is, therefore, this <sup>June</sup> 2<sup>nd</sup> day of May, 2010, by the Commission on Common Ownership Communities of Montgomery County, Maryland,

ORDERED that the Respondent, Martin E. Nelson, Jr., shall:

1. within 30 days after the date of this order, remove all construction materials from the common areas and from his lot; mulch or plant the raised beds in front of his house, remove all weeds from the bed, and conceal the landscape fabric used in the construction; and,

2 . pay to the Complainant the sum of \$50.00 as its filing fee in this matter.

IT IS FURTHER ORDERED that should Respondent fail to comply with this Order, the Complainant may collect the sum due in any manner authorized by its association documents or by law; and Complainant may enter on the property to bring it into compliance with this Order at Respondent's cost.

Any party aggrieved by this decision may file an appeal to the Circuit Court of Montgomery County, Maryland within 30 days from the date of this decision pursuant to the Maryland Rules of Procedure governing appeals from administrative decisions.

Commissioners Garcia and Gannon concur.

COMMISSION ON COMMON OWNERSHIP COMMUNITIES  
FOR MONTGOMERY COUNTY, MARYLAND

By: 

Elizabeth Molloy, Panel Chair

June 2, 2010

cc: Norbeck Hills HOA